

1 LAURENCE F. PULGRAM (CSB No. 115163)  
lpulgram@fenwick.com  
2 JENNIFER L. KELLY (CSB No. 193416)  
jkelly@fenwick.com  
3 CLIFFORD C. WEBB (CSB NO. 260885)  
cwebb@fenwick.com  
4 FENWICK & WEST LLP  
555 California Street  
5 San Francisco, CA 94104  
Telephone: 415.875.2300  
6 Facsimile: 415.281.1350

7 Attorneys for Plaintiff and Counterdefendant  
NEXTDOOR.COM, INC. and Counterdefendant  
8 PRAKASH JANAKIRAMAN

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

13 NEXTDOOR.COM, INC., a Delaware  
corporation,

14 Plaintiff,

15 v.

16 RAJ ABHYANKER, an individual,

17 Defendant.

20 RAJ ABHYANKER, an individual,

21 Counterclaimant,

22 v.

23 NEXTDOOR.COM, INC., a Delaware  
corporation; PRAKASH JANAKIRAMAN, an  
individual; BENCHMARK CAPITAL  
24 PARTNERS VII, L.P., a Delaware limited  
partnership; BENCHMARK CAPITAL  
25 MANAGEMENT CO. VII LLC, a Delaware  
limited liability company; SANDEEP SOOD, an  
26 individual; MONSOON COMPANY, an  
unknown business entity, and DOES 1-50,  
27 inclusive,

28 Counterdefendants.

Case No.: 3:12-cv-05667-EMC

**REQUEST FOR JUDICIAL NOTICE  
IN SUPPORT OF NEXTDOOR.COM,  
INC. AND PRAKASH  
JANAKIRAMAN'S MOTION TO  
DISMISS COUNTERCLAIMS AND  
STRIKE AFFIRMATIVE DEFENSES**

Date: May 2, 2013  
Time: 1:30 P.M.  
Judge: Honorable Edward M. Chen

In support of their Motion to Dismiss Counterclaims and Strike Affirmative Defenses (“Motion to Dismiss and Strike”), Plaintiff and Counterdefendant Nextdoor.com, Inc. (“Nextdoor.com”) and Counterdefendant Prakash Janakiraman (“Janakiraman”) (collectively “Counterdefendants”) submit this Request for Judicial Notice concerning the following documents, which are properly before the Court on the Motion to Dismiss and Strike:

- 1) Counterclaimant Raj Abhyanker’s (“Abhyanker”) November 22, 2006 public patent application number 11/603,442 entitled Map Based Neighborhood Search and Community Contribution (**Exhibit 1**) (*see also* Declaration of Jennifer L. Kelly in Support of Counterdefendants’ Request for Judicial Notice (“Kelly Decl.”) ¶ 2);
- 2) Abhyanker’s publicly recorded January 28, 2008 assignment of United States Patent Application No. 11/603,442 to Fatdoor, Inc. (**Exhibit 2**) (*see also* Kelly Decl. ¶ 3);
- 3) The Complaint filed by Abhyanker on November 10, 2011 in California Superior Court (Santa Clara County), Case No. 1-11-cv-212924, *Abhyanker v. Benchmark Capital Partners VII, L.P. et al.* (the “State Court Action”) (**Exhibit 3**) (*see also* Kelly Decl. ¶ 4);
- 4) The First Amended Complaint (“FAC”) filed by Abhyanker on December 6, 2011 in the State Court Action (**Exhibit 4**) (*see also* Kelly Decl. ¶ 5);
- 5) Abhyanker’s Notice of Opposition to Nextdoor.com’s application to register the NEXTDOOR mark filed in the United States Trademark Trial and Appeal Board (“TTAB”) on January 10, 2012, Opposition No. 91203462 (“First Opposition”) (**Exhibit 5**) (*see also* Kelly Decl. ¶ 6);
- 6) Abhyanker’s February 7, 2012 Request for Dismissal of the State Court Action (**Exhibit 6**) (*see also* Kelly Decl. ¶ 7);
- 7) Abhyanker’s Notice of Opposition to Nextdoor.com’s application to register the NEXTDOOR mark filed in the TTAB on February 9, 2012, Opposition No. 91203762 (“Second Opposition”) (**Exhibit 7**) (*see also* Kelly Decl. ¶ 8).
- 8) The order issued by the TTAB on November 6, 2012 suspending Proceeding No. 91204462 pending determination of this action. (**Exhibit 8**) (*see also* Kelly Decl. ¶ 9).

As explained below, these documents are properly the subject of judicial notice under Federal Rule of Evidence 201, and this Court may consider them and their contents in deciding Counterdefendants’ Motion to Dismiss and Strike.

**I. ABHYANKER'S STATE COURT ACTION AND TRADEMARK TRIAL AND APPEAL BOARD PLEADINGS ARE APPROPRIATELY THE SUBJECT OF JUDICIAL NOTICE.**

Under Federal Rule of Evidence 201, the Court may take judicial notice of any facts “not subject to reasonable dispute” in that they are “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2). Courts in the Ninth Circuit routinely take judicial notice of documents filed in related litigation, including documents filed in related state court proceedings and the TTAB. *See, e.g., Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006) (taking judicial notice of court documents and pleadings in related litigation and considering their contents); *Burbank-Glendale-Pasadena Airport Authority v. City of Burbank*, 136 F.3d 1360, 1364 (9th Cir. 1998) (taking judicial notice, in a federal action, of pleadings filed in California Superior Court); *Sensible Foods, LLC v. World Gourmet, Inc.*, Case No. 11-2819, 2012 U.S. Dist. LEXIS 21446, at \*12-\*13 (N.D. Cal. Feb. 21, 2012) (taking judicial notice of documents filed in the TTAB in related federal litigation). This includes not only noticing the fact of these documents’ filing, but the nature of the allegations and arguments made in those documents. *See, e.g., Reyn’s Pasta Bella*, 442 F.3d at 746 n.6 (considering the contents of court documents in related litigation to determine the issues actually litigated in that case); *Sensible Foods*, 2012 U.S. Dist. LEXIS 21446, at \*12-\*13 (considering the contents of documents filed in the TTAB and dismissing with prejudice based on those contents). Consideration of such documents does not convert a motion to dismiss into one for summary judgment. *See, e.g., In re Calpine Corp. Sec. Litig.*, 288 F. Supp. 2d 1054, 1076 (N.D. Cal. 2003).

Exhibits 3-7 to this Request for Judicial Notice are pleadings that Counterclaimant Abhyanker filed in the California Superior Court for the County of Santa Clara and in the TTAB in related litigation against Counterdefendant Nextdoor.com, and Exhibit 8 is an order issued by the TTAB suspending those proceedings pending determination of this action. These prior pleadings assert many of the same factual allegations and claims that Abhyanker has asserted in this litigation. As further explained in the Motion to Dismiss and Strike, in the State Court

1 Action, Abhyanker alleged a number of related causes of action against Counterdefendant  
2 Nextdoor.com, including a claim for trade secret misappropriation based on the same general  
3 theories asserted here. *See* Ex. 4. The TTAB Oppositions also involve many overlapping  
4 allegations to those asserted here—in essence, claiming that Abhyanker has prior rights in a  
5 neighborhood social networking website called Nextdoor.com that he claims Counterdefendant  
6 Nextdoor.com stole. Exs. 5, 7.

7 As explained by the Motion to Dismiss and Strike, consideration of these documents is  
8 appropriate given that they directly contradict assertions now made by Abhyanker in this related  
9 litigation. The genuineness of these publicly available documents cannot be disputed. *See, e.g.,*  
10 *Reyn's Pasta Bella*, 442 F.3d at 746 n.6 (court filings “are readily verifiable and, therefore, the  
11 proper subject of judicial notice”). As such, this Court may take judicial notice of Exhibits 3-8 in  
12 deciding Counterdefendants’ Motion to Dismiss and Strike.

13 **II. ABHYANKER’S PATENT FILINGS ARE ALSO SUBJECT TO JUDICIAL**  
14 **NOTICE.**

15 Courts also routinely take judicial notice of the existence and contents of documents filed  
16 with the United States Patent and Trademark Office, including patent applications and patent  
17 assignments. *See, e.g., Applied Materials v. Advanced Semiconductor Materials Am.*, C-92-  
18 20643, 1994 U.S. Dist. LEXIS 17569, at \*5 (N.D. Cal. Apr. 19, 1994) (taking judicial notice of  
19 patents and patent applications); *Welcome Co. v. Harriet Carter Gifts, Inc.*, Case No. 98-0598,  
20 1998 U.S. Dist. LEXIS 21884, at \*9-\*10 (C.D. Cal. Mar. 26, 1998) (taking judicial notice of  
21 USPTO Notice of Recordation of Assignment). Exhibits 1-2 to the Request for Judicial Notice  
22 are a patent application and assignment filed by Abhyanker. As explained by the Motion to  
23 Dismiss and Strike, these documents are fatal to Abhyanker’s claims here—demonstrating  
24 Abhyanker’s public disclosure of his purported trade secrets and confirming his lack of ownership  
25 over the asserted intellectual property. As publicly available documents, they are appropriately  
26 the subject of judicial notice and can be considered by the Court in deciding the Motion to  
27 Dismiss and Strike.  
28

**CONCLUSION**

For the foregoing reasons, Counterdefendants respectfully request that the Court take judicial notice of Exhibits 1-8 to this Request for Judicial Notice in deciding their Motion to Dismiss and Strike.

Dated: March 15, 2013

FENWICK & WEST LLP

By: /s/ Jennifer L. Kelly  
Jennifer L. Kelly

Attorneys for Plaintiff and Counterdefendant  
NEXTDOOR.COM, INC. and Counterdefendant  
PRAKASH JANAKIRAMAN

FENWICK & WEST LLP  
ATTORNEYS AT LAW  
SAN FRANCISCO